

D.P.U. 89-AD-9

Adjudicatory hearing in the matter of the complaint of Frank and Sharon Shea relative to the rates and charges for service provided by the New England Telephone Company and American Telephone and Telegraph Company

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FOR: NEW ENGLAND TELEPHONE COMPANY
Respondent

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FOR: AMERICAN TELEPHONE AND
TELEGRAPH COMPANY
Respondent

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FOR: FRANK AND SHARON SHEA
Petitioners

I. INTRODUCTION

On November 9, 1988, an informal hearing was held before the Consumer Division ("Division") of the Department of Public Utilities ("Department") on the complaint of Mr. and Mrs. Frank Shea ("Complainants") relative to the rates and charges for service provided by the New England Telephone Company ("NET")¹ and American Telephone & Telegraph Company ("AT&T"), MCI Telecommunications Corporation ("MCI"), and Media 4 (jointly "Respondents").² The Complainants were dissatisfied with the resolution of the dispute and requested an adjudicatory hearing before the Department pursuant to 220 C.M.R. § 25.00 (4)(c). The matter was docketed as D.P.U. 89-AD-9.

Pursuant to notice duly issued, an adjudicatory hearing was held on October 3, 1991, at the Department's offices in Boston. Michelle Jameson, the sister of Mrs. Shea, testified on behalf of the Complainants. NET sponsored the testimony of Patricia Tildes, a customer service representative.³ The evidentiary record consists of seven exhibits and three record requests.

II. SUMMARY OF ISSUE

The Complainants are disputing bills rendered to them between January, 1988 and December, 1988 in the amount of \$1773.66 (Exh. NET-7). The bills include charges from

¹ On January 1, 1994, NET began to do business as NYNEX New England. For the purposes of this decision, the Department will use the name NET.

² While these four carriers are the Respondents, only NET and AT&T filed appearances in the proceeding.

³ AT&T relied on the testimony of NET's witness in presenting its case (Tr. at 46-47).

NET in the amount of \$858.69; AT&T in the amount of \$349.16; MCI in the amount of \$7.35; and Media 4 in the amount of \$558.46 (Tr. at 17; Exh. NET-7). The Complainants maintain that during the months in dispute they received "outrageous" phone bills for calls not placed by them, and not originating from their home (Tr. at 6). NET contends that it conducted testing which indicated that there was no mechanical way in which the calls in dispute could have been initiated from someplace other than the Complainant's residence (id. at 4). The record indicates that the disputed calls were placed to Group Bridging Service ("GBS") 550 lines, to 900 numbers such as "Gab Line", "Talk Line", "Party Line", and "Sporttalk", and long distance "976" adult lines in Los Angeles (id. at 29, 44; Exh. NET-5).

III. SUMMARY OF FACTS

A. The Complainant

On behalf of the Complainants, Ms. Jameson stated that the calls in dispute were literally placed one after another, and that for the bills to be accurate, a person would have to have been on the phone "for hours...hanging up, dialing again, hanging up, dialing again" (Tr. at 65). Many of the phone calls lasted only one minute (id.). Ms. Jameson pointed out the absurdity of this pattern of phone calling, since the dialer was calling talk lines ostensibly to talk to the person on the other end and not to hang up (id.). The Complainants believed that this indicated wiring or equipment problems with their phone or phone lines (id. at 13-14; Exh. NET-6).

Ms. Jameson stated since that the Complainants' children were ages four, two, and nine months, they could not have placed the calls (Tr. at 66). She noted that the calls were

made during the day when Mr. Shea was at work and could not have placed them, and also when Mrs. Shea could verify that she was otherwise occupied (id. at 65-66). Further, Ms. Jameson stated that the Complainants' babysitter was not on the Complainants' premises when the calls were made (id. at 59).

The Complainants also questioned the inconsistencies in the phone bills where some of the phone calls overlapped in time (id. at 52). Ms. Jameson pointed to an example of a phone call placed at 8:58 a.m. on January 31, 1988 that lasted for four minutes, yet noted that a subsequent phone call was placed at 8:59 a.m. (id. at 52).

Finally, Ms. Jameson questioned whether NET checked to see if another party may have entered the basement of the two-family dwelling where the Complainants resided and tapped into the Complainants' phone line (id. at 47).

B. The Respondents

Ms. Tildes testified that she first became aware of the Complainants' problem on January 13, 1988 when Mrs. Shea called NET to question several calls on her bill (id. at 9-10, 13-14). Mrs. Tildes stated that NET did a wire check on the line and found no trouble with the line (id. at 10). Since the calls persisted, Ms. Tildes' opinion was that the calls were made from within the household (id. at 10).

At the request of AT&T, NET performed a wire check on February 8, 1988, because the Complainants did not recognize calls to 550 numbers and to 900 services (id. at 11-12, 22, 40). Ms. Tildes testified that the wire check involved checking the inside facilities in the central office to insure that the dial tone was leaving on a clear line and then terminating (id.

at 39-40). Further, Ms. Tildes testified that NET performed an electronic test that gave the voltage in specific numbers to reveal if the line was clear and to indicate the number of phones on the line (id.). NET stated that the purpose of the test was to discover if some other party could be tapping into the line and making calls which appeared on the Complainants bill that were not actually made from the Complainants' premises (id. at 40). Ms. Tildes testified that no trouble was found on the Complainants' telephone line when NET performed this test (id. at 12, 41).

Ms. Tildes testified that on March 14, 1988, the Complainants requested that their telephone number be changed (id. at 22). The Complainants continued to dispute new charges even after the change of number (id. at 23). On April 4, 1988, the Complainants moved from Nicks Rock Road to Summer Street (id. at 23). Ms. Tildes stated that although the Complainants had changed residences, the same problem continued to occur (id. at 12). Ms. Tildes testified that, on April 7, 1988, NET conducted additional tests relating to the Complainants' telephone jack, and again, no trouble was found (id. at 12-13).

Ms. Tildes testified that the Complainants requested a block on GBS calls (i.e. 550 numbers) on June 7, 1988 (id. at 31). She stated that NET placed a block on 550 calls on June 14, 1988, but couldn't block the 900 or 976 calls without blocking all long distance (id. at 29; Exh. NET-1 at 8).⁴ Ms. Tildes stated that technology for blocking 900 calls did not become available in that area until 1989, after the date of this dispute (Tr. at 32).

⁴ Ms. Tildes testified that NET informed the Complainants that complete blocking service was available, but that the Complainants chose not to block all long distance calls. (Tr. at 29-30).

Ms. Tildes testified that NET investigated a complaint on July 8, 1988 at the Complainants' new address on Summer Street (id. at 14). She stated that NET did a check on the premises, and no trouble was found (Exh. NET-6).

Ms. Tildes testified that on July 28, 1988, the Sheas complained to NET that they could hear other voices on their phone lines (Tr. at 14-15). NET did a box change by taking the Complainants off of the old cable and putting them on a new one (id. at 15; Exh. NET-6). Ms. Tildes testified that a technician was dispatched on September 23, 1988, and verified that the cable and pedestals serving the Complainants were operating properly (Tr. at 15-16). In addition, Ms. Tildes stated that the workman checked certain lines on poles on Oak Street to be sure no lines were crossing (id. at 15-16; Exh. NET-6). Further, Ms. Tildes testified that access to the premises would be necessary for someone to tap into the Complainants' phone line, and that such access is beyond NET's control (Tr. at 48).

To explain overlapping calls, NET stated that it is standard procedure for NET to round to the next highest minute in billing calls (RR-DPU-3). For example, if a call is initiated at 8:00 and lasts through 8:03 and 31 seconds, the call is billed as a four minute call (id.). NET accounted for most of the overlapping calls because of rounding (id.). For the calls overlapping for more than one minute, NET stated that it was probable that they were a result of three-way calling, a service by which the caller can include in a telephone call two other telephone lines (id.). NET stated that the Complainants had subscribed to this service until changing residences on April 4, 1988, and so had the capability to place the overlapping calls (id.).

III. STANDARD OF REVIEW

The Department's well-established policy requires that a company satisfy the burden of producing such substantial evidence as will permit a presumption concerning the accuracy of the company's questioned billings. DeSantis v. New England Telephone and Telegraph, D.P.U. 19889 (1981). The Department has consistently held that if a company can demonstrate that the telephone calls billed to a customer are directly-dialed and that the equipment being used by the company to carry the calls is operating properly, the company may collect the bill. See New England Telephone Company v. Quayyum, D.P.U. 604 (1981); Lyons v. New England Telephone Company, D.P.U. 19917 (1981).

IV. ANALYSIS AND FINDINGS

The issue presented in this case is whether the bills rendered to the Complainants accurately reflect their telephone usage between January, 1988 and December, 1988. The Complainants asserted that they should not be charged for the disputed calls because (1) the number and abbreviated length of the calls in dispute indicated a wiring or equipment defect, and (2) the calls overlapped in time on the phone bills, signifying billing errors.

The evidence presented indicates that NET performed several line tests, including one at AT&T's request, to determine if the telephone wiring was functioning properly for transmission and disconnection of calls. In addition, NET changed phone numbers, did jack work, did a box change and put the customers on a new cable, and checked pedestals. All tests indicated that the lines were operating properly.

NET presented evidence indicating that apparent inconsistencies on the Complainants'

phone bills could be explained by NET's policy of rounding to the next highest minute in billing calls, and by the Complainants' three-way calling option. There is no evidence to the contrary that would cause us to conclude that these are not reasonable explanations for the overlap of certain calls.

Ms. Jameson argued that the calls may have been made by someone entering the Complainants' basement and tapping onto their line. While Ms. Tildes agreed that this could happen, she testified that it would be beyond the control of NET to detect such an occurrence. Furthermore, even if that were the case, the Complainants, as customers of record, would still be liable for charges incurred upon their line.

Based on the above, the Department finds that the Respondents have presented substantial evidence proving that the bills rendered to the Complainant were accurate. The Department also finds that the Respondents have demonstrated that the telephone charges in question were the result of directly dialed calls and that the equipment used to carry the calls was operating properly. Accordingly, the Respondents may collect the charges at issue.

V. ORDER

Accordingly, after due notice, hearing and consideration, it is

ORDERED: That all bills rendered to Mr. and Mrs. Frank Shea by the Respondents from January, 1988 to December, 1988 in the amount of \$1773.66 are due and payable. Of that total amount, \$858.69 is attributable to NET charges and \$914.97 is attributable to AT&T toll calls, MCI and Media 4 calls. The Complainants may pay the outstanding balance of \$858.69 to NET in a lump sum on November 1, 1994, or at the rate of \$71.55

per month for eleven months and \$71.64 on the twelfth month, with the first payment due November 1, 1994, or pursuant to a different payment plan mutually agreed to by the parties. The Complainants may pay an outstanding balance of 914.94 to AT&T, MCI and Media 4 in a lump sum on November 4, 1994, or at a rate of \$76.25 per month for eleven months and \$76.22 on the twelfth month, or pursuant to a different payment plan mutually agreed to by the parties. These payments are in addition to current charges as rendered.

By Order of the Department,

Kenneth Gordon, Chairman

Barbara Kates-Garnick, Commissioner

Mary Clark Webster, Commissioner